

sioner of Social Security to have ceased to meet the requirements of subsection (b)(2).

(Added Pub. L. 100-647, title VIII, § 8007(a)(1), Nov. 10, 1988, 102 Stat. 3781; amended Pub. L. 101-239, title X, § 10204(b)(1), Dec. 19, 1989, 103 Stat. 2474; Pub. L. 103-296, title I, § 108(h)(3), Aug. 15, 1994, 108 Stat. 1487.)

REFERENCES IN TEXT

Sections 203 and 222(b) of the Social Security Act, referred to in subsec. (b)(3), are classified to sections 403 and 422(b), respectively, of Title 42, The Public Health and Welfare. Section 222(b) was repealed by Pub. L. 106-170, title I, § 101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

PRIOR PROVISIONS

A prior section 3127 was renumbered section 3128 of this title.

AMENDMENTS

1994—Subsecs. (b)(2), (c)(2). Pub. L. 103-296 substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.

1989—Subsec. (a). Pub. L. 101-239, § 10204(b)(1)(B), substituted “the employees thereof” for “his employees” in concluding provisions.

Subsec. (a)(1). Pub. L. 101-239, § 10204(b)(1)(A), inserted “(or, if the employer is a partnership, each partner therein)” after “an employer”.

Subsec. (b). Pub. L. 101-239, § 10204(b)(1)(C), inserted “(or a partner)” after “an employer” in introductory provisions.

Subsec. (c). Pub. L. 101-239, § 10204(b)(1)(D), substituted “the employees thereof” for “his employees” in introductory provisions.

Subsec. (c)(1). Pub. L. 101-239, § 10204(b)(1)(E), inserted “(or, if the employer is a partnership, each partner therein)”.

Subsec. (c)(2). Pub. L. 101-239, § 10204(b)(1)(F), substituted “such employer (or, if the employer is a partnership, any partner therein) or the employee involved does not meet” for “such employer or the employee involved ceases to meet” in cl. (A) and inserted “(or, if the employer is a partnership, any partner therein)” after “such employer” in cl. (B).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10204(b)(2) of Pub. L. 101-239 provided that: “The amendments made by this subsection [amending this section] shall be effective as if they were included in the amendments made by section 8007(a)(1) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3781) [Pub. L. 100-647].”

EFFECTIVE DATE

Section applicable to wages paid after Dec. 31, 1988, see section 8007(d) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note under section 1402 of this title.

§ 3128. Short title

This chapter may be cited as the “Federal Insurance Contributions Act.”

(Aug. 16, 1954, ch. 736, 68A Stat. 429, § 3125; renumbered § 3126, Pub. L. 86-778, title I, § 103(q)(1), Sept. 13, 1960, 74 Stat. 939; renumbered § 3127, Pub. L. 99-509, title IX, § 9002(a)(1), Oct. 21, 1986, 100 Stat. 1970; renumbered § 3128, Pub. L. 100-647, title VIII, § 8007(a)(1), Nov. 10, 1988, 102 Stat. 3781.)

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509, except as otherwise provided, effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of Title 42, The Public Health and Welfare, see section 9002(d) of Pub. L. 99-509, set out as a note under section 418 of Title 42.

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

Subchapter	Sec. ¹
A. Tax on employees	3201
B. Tax on employee representatives	3211
C. Tax on employers	3221
D. General provisions	3231
E. Tier 2 tax rate determination.	3241

AMENDMENTS

2001—Pub. L. 107-90, title II, § 204(e)(5), Dec. 21, 2001, 115 Stat. 893, added item for subchapter E.

Subchapter A—Tax on Employees

Sec.	
3201.	Rate of tax.
3202.	Deduction of tax from compensation.

§ 3201. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee. For purposes of the preceding sentence, the term “applicable percentage” means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the applicable percentage of the compensation received during any calendar year by such employee for services rendered by such employee.

(2) Applicable percentage

For purposes of paragraph (1), the term “applicable percentage” means—

(A) 4.90 percent in the case of compensation received during 2002 or 2003, and

(B) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, § 206(a), 68 Stat. 1040; Pub. L. 86-28, pt. II, § 201(a), May 19, 1959, 73 Stat. 28; Pub. L. 88-133, title II, § 201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89-97, title I, §§ 105(b)(1), 111(c)(1), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89-212, §§ 4,

¹ Section numbers editorially supplied.

5(a), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89-699, title III, §301(a), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89-700, title III, §301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 93-69, title I, §102(a), July 10, 1973, 87 Stat. 162; Pub. L. 94-93, title II, §201, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94-455, title XIX, §1903(a)(6), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97-34, title VII, §741(a), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98-76, title II, §§211(a), 221, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100-203, title IX, §9031(a), Dec. 22, 1987, 101 Stat. 1330-296; Pub. L. 101-508, title V, §5125(a), Nov. 5, 1990, 104 Stat. 1388-285; Pub. L. 107-90, title II, §204(c), Dec. 21, 2001, 115 Stat. 892.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-90 amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.”

1990—Subsec. (a). Pub. L. 101-508 substituted “applicable” for “following” before “percentage of the” and provision defining the term “applicable percentage” for provision specifying that in the case of compensation received during 1985 the rate of tax was 7.05 percent, for 1986 or 1987 the rate was 7.15 percent, for 1988 or 1989 the rate was 7.51 percent, and 1990 or thereafter the rate was 7.65 percent.

1987—Subsec. (b). Pub. L. 100-203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

“In the case of compensation

received during:

The rate shall be:

1985	3.50
1986 or thereafter	4.25.”

1983—Pub. L. 98-76, §221, amended section generally, substituting a two tiered tax system with accompanying tax rate tables and a cross reference to section 3231 of this title, for provisions which had taxed an employee at 2.75 percent of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month and which had provided that the rate of tax imposed by subsection (a) be increased by the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month.

Pub. L. 98-76, §211(a), substituted “2.75 percent” for “2.0 percent”.

1981—Subsec. (a). Pub. L. 97-34 added subsec. (a).

Subsec. (b). Pub. L. 97-34 designated existing provisions as subsec. (b) and substituted “The rate of tax imposed by subsection (a) shall be increased by” for “In addition to other taxes, there is hereby imposed on the income of every employee a tax rate equal to”.

1976—Pub. L. 94-455 struck out “of the Internal Revenue Code of 1954” after “wages by section 3101(a)”, “of such Code” after “rate imposed by section 3101(b)”, “after September 30, 1973,” after “for services rendered by him”, “of the Internal Revenue Code of 1954” after “as defined in section 3121”, and “after September 30, 1973” after “for any month”.

1975—Pub. L. 94-93 inserted “in any calendar month” after “compensation paid”.

1973—Pub. L. 93-69 substituted new tax rate provisions on income of employee for services rendered after Sept. 30, 1973, for former provisions which prescribed 6¼, 6½, 7, 7¼, and 7½ percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¼ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1966—Pub. L. 89-700 substituted “rendered after September 30, 1965” for “rendered after December 31, 1964”, and “(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965” for “\$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended”.

Pub. L. 89-699 substituted “7 percent” for “6¼ percent” in subd. (3), “7¼ percent” for “7 percent” in subd. (4), and “7½ percent” for “7¼ percent” in subd. (5).

1965—Pub. L. 89-212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 6¼ percent of so much of the compensation paid to such employee for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid to such employee for services rendered by him after Dec. 31, 1961, and inserted “and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended”.

Pub. L. 89-97 substituted “the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¼ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)” for “the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956” and inserted “plus the rate imposed by section 3101(b)” after “section 3101(a)”, respectively.

1963—Pub. L. 88-133 limited existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Pub. L. 86-28 increased tax from 6¼ percent of compensation not in excess of \$350 for any calendar month to 6¼ percent of the compensation not in excess of \$400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after Dec. 31, 1964, by a number of percentage points equal at any given time to the number of percentage points by which the rate of tax imposed by sec-

tion 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted “\$350” for “\$300”.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9031(b) of Pub. L. 100-203 provided that: “The amendment made by this section [amending this section] shall apply with respect to compensation received after December 31, 1987.”

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 212 of Pub. L. 98-76 provided that: “The amendments made by this part [part I (§§ 211, 212) of subtitle A of title II of Pub. L. 98-76, amending this section, sections 3211 and 3221 of this title, and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after December 31, 1983, and before January 1, 1985.”

Section 227(a) of Pub. L. 98-76 provided that: “The amendments made by sections 221, 222, 223, and 225 [amending this section and sections 3202, 3211, 3221, and 3231 of this title and section 430 of Title 42] shall apply to remuneration paid after December 31, 1984.”

EFFECTIVE DATE OF 1981 AMENDMENT

Section 741(e) of Pub. L. 97-34 provided that: “The amendments made by this section [amending this section and sections 3211, 3221, and 3231 of this title and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after September 30, 1981.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 207 of Pub. L. 94-93 provided that: “The amendments made by sections 201 through 205 of this title [amending this section and sections 3211, 3221, and 3231 of this title] shall apply for taxable years ending on or after the date of the enactment of this Act [Aug. 9, 1975] and for taxable years ending before the date of the enactment of this Act as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on the date of enactment of this Act. The amendment made by section 206 of this title [amending section 3231 of this title] shall apply for taxable years beginning on or after the date of enactment of this Act: *Provided, however*, That with respect to payment made prior to the date of enactment of this Act, the employee may file a written request under section 206 within six months after the enactment of this Act.”

EFFECTIVE DATE OF 1973 AMENDMENT

Section 109(b) of Pub. L. 93-69 provided that: “The amendments made by section 102 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall become effective on October 1, 1973, and shall apply only with respect to compensation paid for services rendered on or after that date: *Provided, however*, That such amendments shall not be applicable to any dock company, common carrier railroad, or railway labor organization described in section 1(a) of the Railroad Retirement Act of 1937 [section 228a(a) of Title 45, Railroads], with respect to those of its employees

covered as of October 1, 1973, by a private supplemental pension plan established through collective bargaining, where a moratorium in an agreement made on or before March 8, 1973, is applicable to changes in rates of pay contained in the current collective-bargaining agreement covering such employees, until the earlier of (1) the date as of which such moratorium expires, or (2) the date as of which such dock company, common carrier railroad, or railway labor organization agrees through collective bargaining to make the provisions of such amendments applicable.”

EFFECTIVE DATE OF 1965 AMENDMENTS

Section 6 of Pub. L. 89-212 provided that: “The amendments made by sections 1 and 3 of this Act [amending sections 228b, 228c, and 228e of Title 45, Railroads] shall take effect with respect to annuities accruing and deaths occurring in months after the month in which this Act is enacted [September 1965], and shall apply also to annuities paid in lump sums equal to their commuted value because of a reduction in such annuities under section 2(e) of the Railroad Retirement Act of 1937 [section 228b(e) of Title 45], as in effect before the amendments made by this Act, as if such annuities had not been paid in such lump sums: *Provided, however*, That the amounts of such annuities which were paid in lump sums equal to their commuted value shall not be included in the amount of annuities which become payable by reason of section 1 of this Act [amending section 228b of Title 45]. The amendments made by section 2 of this Act [amending sections 3203, 3231, 3402, 6053, and 6652 of this title, and section 228a of Title 45] shall apply only with respect to tips received after 1965. The amendments made by section 4 of this Act [amending this section and sections 3202, 3211, and 3221 of this title] shall apply only with respect to calendar months after the month in which this Act is enacted. The amendments made by section 5 of this Act [amending this section and sections 3211 and 3221 of this title] shall apply only with respect to compensation paid for services rendered after September 30, 1965.”

Section 105(b)(4) of Pub. L. 89-97 provided that: “The amendments made by this subsection [amending this section and sections 3211 and 3221 of this title] shall be effective with respect to compensation paid for services rendered after December 31, 1965.”

Amendment by section 111(c)(1) of Pub. L. 89-97 applicable to calendar year 1966, or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act [this chapter] provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act [section 3101 et seq. of this title] provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 1395i-1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 202 of Pub. L. 86-28 provided that: “The amendments made by section 201 [amending this section and sections 3202, 3211, and 3221 of this title] shall, except as otherwise provided in such amendments, be effective as of the first day of the calendar month next following the month in which this Act was enacted [May, 1959], and shall apply only with respect to compensation paid after the month of such enactment, for services rendered after such month of enactment.”

EFFECTIVE DATE OF 1954 AMENDMENT

Section 407 of act Aug. 31, 1954, as amended by act Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095, provided that: “The amendments to the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by section 206 [amending this section and sections 3202, 3211, 3221, and 3231 of this title] shall become effective as if enacted as a part of the Internal Revenue Code of 1986.”

SEPARABILITY

Section 301 of Pub. L. 93-69 provided that: "If any provision of this Act [amending this section, sections 3202, 3211, and 3221 of this title, sections 228b, 228c, and 228e of Title 45, Railroads, and section 15a of former Title 49, and enacting provisions set out as notes under this section, and sections 228b, 228c, 228f, and 228o of Title 45] or the application thereof to any person or circumstances should be held invalid, the remainder of such Act or the application of such provision to other persons or circumstances shall not be affected thereby."

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97-123 or the amendments made by that section, see section 3(f) of Pub. L. 97-123, set out as a note under section 3101 of this title.

§ 3202. Deduction of tax from compensation

(a) Requirement

The taxes imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the taxes from the compensation of the employee as and when paid. An employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (3) of section 3231(e) is applicable may deduct an amount equivalent to such taxes with respect to such tips from any compensation of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20.

(b) Indemnification of employer

Every employer required under subsection (a) to deduct the tax shall be liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

(c) Special rule for tips

(1) In the case of tips which constitute compensation, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the quarter) in which the tips were deemed paid, by deducting the amount of the tax from such compensation of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the taxes imposed by section 3201, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceed the

compensation of the employee (excluding tips) from which the employer is required to collect the taxes under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any quarter of the calendar year,

(B) to determine the amount to be deducted upon each payment of compensation (exclusive of tips) during such quarter as if the tips so estimated constituted actual tips so reported, and

(C) to deduct upon any payment of compensation (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such quarter (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such compensation of the employee during the quarter to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the quarter.

(4) If the taxes imposed by section 3201 with respect to tips which constitute compensation exceed the portion of such taxes which can be collected by the employer from the compensation of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(d) Special rule for certain taxable group-term life insurance benefits

(1) In general

In the case of any payment for group-term life insurance to which this subsection applies—

(A) subsection (a) shall not apply,

(B) the employer shall separately include on the statement required under section 6051—

(i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

(ii) the amount of the tax imposed by section 3201 on such payments, and

(C) the tax imposed by section 3201 on such payments shall be paid by the employee.

(2) Benefits to which subsection applies

This subsection shall apply to any payment for group-term life insurance to the extent—

(A) such payment constitutes compensation, and

(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer.

(Aug. 16, 1954, ch. 736, 68A Stat. 431; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86-28, pt. II, §201(b), May 19, 1959, 73 Stat. 29;

Pub. L. 88-133, title II, §202, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89-212, §§2(a), 4, Sept. 29, 1965, 79 Stat. 858, 861; Pub. L. 89-700, title III, §301(iii), (v), Oct. 30, 1966, 80 Stat. 1088; Pub. L. 93-69, title I, §102(b), July 10, 1973, 87 Stat. 162; Pub. L. 94-455, title XIX, §§1903(a)(7), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1807, 1834; Pub. L. 98-76, title II, §225(a)(2), (c)(1)(A), (B), (2)-(5), Aug. 12, 1983, 97 Stat. 425; Pub. L. 101-508, title V, §5124(b), Nov. 5, 1990, 104 Stat. 1388-285.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101-508 added subsec. (d).

1983—Subsec. (a). Pub. L. 98-76, §225(a)(2), (c)(1)(A), (2), substituted “taxes imposed by section 3201” for “tax imposed by section 3201”, substituted “the amount of the taxes” for “the amount of the tax”, and “such taxes” for “such tax”, and struck out provisions that if an employee was paid compensation by more than one employer for services rendered during any calendar month and the aggregate of such compensation was in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month would be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him to the employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month; and that in the event that the compensation so paid by such employers to the employee for services rendered during such month was less than an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month, each subordinate unit of a national railway-labor-organization employer would deduct such proportion of any additional tax as the compensation paid by such employer to such employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month.

Subsec. (c)(2). Pub. L. 98-76, §225(c)(1)(B), (3), (5), substituted “taxes imposed by section 3201” for “tax imposed by section 3201”, “the taxes under paragraph (1)” for “the tax under paragraph (1)”, and “exceed” for “exceeds”.

Subsec. (c)(4). Pub. L. 98-76, §225(c)(1)(B), (4), (5), substituted “taxes imposed by section 3201” for “tax imposed by section 3201”, “such taxes” for “such tax”, and “exceed” for “exceeds”.

1976—Subsec. (a). Pub. L. 94-455, §1903(a)(7)(A), struck out provisions relating to the September 30, 1973, qualification on the applicability of provisions of this subsection and “of the Internal Revenue Code of 1954” before “for any month” wherever appearing.

Subsec. (b). Pub. L. 94-455, §1903(a)(7)(B), struck out “made” after “to deduct the tax shall be”.

Subsec. (c)(3). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1973—Subsec. (a). Pub. L. 93-69, in second sentence reading “If an employee . . .”, substituted “1973” for “1965” wherever appearing, struck out “(i) \$450, or (ii)” before “an amount equal to” in two places, and struck out “, whichever is greater,” after “Internal Revenue Code of 1954” in two places.

1966—Subsec. (a). Pub. L. 89-700 substituted “after September 30, 1965” for “after the month in which this provision was amended in 1959” in six places, and “(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965” for “\$400 for any calendar month before the calendar month next following the month in which this provi-

sion was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended” in two places.

1965—Subsec. (a). Pub. L. 89-212, §§2(a)(1), 4, inserted sentence permitting an employer who is furnished by an employee a written statement of tips pursuant to section 6053(a) to which par. (3) of section 3231(e) is applicable to deduct an amount equivalent to such tax with respect to such tips from any compensation of the employee under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20, and inserted “and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended” in two places.

Subsec. (c). Pub. L. 89-212, §2(a)(2), added subsec. (c).

1963—Subsec. (a). Pub. L. 88-133 limited existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86-28 substituted “after the month in which this provision was amended in 1959” for “after 1954” and for “after December 31, 1954” in five places, and “\$400” for “\$350” in two places.

1954—Subsec. (a). Act Aug. 31, 1954, substituted “\$350” for “\$300” wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to coverage provided after Dec. 31, 1990, see section 5124(c) of Pub. L. 101-508, set out as a note under section 3102 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(7) of Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93-69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 2(a) of Pub. L. 89-212 effective only with respect to tips received after 1965, and amendment by section 4 of Pub. L. 89-212 effective only with respect to calendar months after the month in which Pub. L. 89-212 is enacted, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86-28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

Subchapter B—Tax on Employee Representatives

Sec.	
3211.	Rate of tax.
3212.	Determination of compensation.

§ 3211. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative. For purposes of the preceding sentence, the term “applicable percentage” means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative.

(2) Applicable percentage

For purposes of paragraph (1), the term “applicable percentage” means—

(A) 14.75 percent in the case of compensation received during 2002,

(B) 14.20 percent in the case of compensation received during 2003, and

(C) in the case of compensation received during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 432; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86-28, pt. II, §201(c), May 19, 1959, 73 Stat. 29; Pub. L. 88-133, title II, §201, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89-97, title I, §§105(b)(2), 111(c)(2), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89-212, §§4, 5(b), Sept. 29, 1965, 79 Stat. 861; Pub. L. 89-699, title III, §301 (b), (d), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89-700, title III, §301(v), (vi), Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91-215, §4, Mar. 17, 1970, 84 Stat. 70; Pub. L. 93-69, title I, §102(c),

July 10, 1973, 87 Stat. 162; Pub. L. 94-93, title II, §202, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94-455, title XIX, §1903(a)(8), Oct. 4, 1976, 90 Stat. 1807; Pub. L. 97-34, title VII, §741(b), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98-76, title II, §§211(c), 223, Aug. 12, 1983, 97 Stat. 419, 421; Pub. L. 101-508, title V, §5125(b), Nov. 5, 1990, 104 Stat. 1388-285; Pub. L. 107-90, title II, §§203(a), 204(b), Dec. 21, 2001, 115 Stat. 891.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-90, §204(b), added subsec. (a) and struck out former subsec. (a), which related to imposition of tier 1 and 2 taxes.

Subsec. (b). Pub. L. 107-90, §204(b), added subsec. (b).

Pub. L. 107-90, §203(a), struck out subsec. (b) which read as follows: “In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative.”

Subsec. (c). Pub. L. 107-90, §204(b), added subsec. (c).

1990—Subsec. (a). Pub. L. 101-508 substituted “applicable” for “following” before “percentage of the” and provision defining the term “applicable percentage” for provision specifying that in the case of compensation received during 1985 the rate of tax was 14.10 percent, for 1986 or 1987 the rate was 14.30 percent, for 1988 or 1989 the rate was 15.02 percent, and for 1990 or thereafter the rate was 15.30 percent.

1983—Subsec. (a). Pub. L. 98-76, §223, substituted provisions imposing a two tiered tax on each employee representative equal to the percentage of the compensation received during any calendar year by such employee representative for services rendered as is set out in accompanying tables, for provisions that had imposed on each employee representative a tax equal to 12.75 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a), 3101(b), 3111(a), and 3111(b) of so much of the compensation paid in any calendar month to such employee representative for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable “wage” as defined in section 3121 for any month.

Pub. L. 98-76, §211(c), substituted “12.75 percent” for “11.75 percent”.

1981—Subsec. (a). Pub. L. 97-34 substituted “11.75” for “9.5”.

1976—Subsec. (a). Pub. L. 94-455 substituted “3111(a), and 3111(b)” for “3111(a), 3111(b)”, struck out “of the Internal Revenue Code of 1954” before “of so much of the compensation”, “after September 30, 1973,” after “rendered by him”, “of the Internal Revenue Code of 1954” after “as defined in section 3121”, and “after September 30, 1973” after “for any month”.

1975—Subsec. (a). Pub. L. 94-93 inserted “in any calendar month” after “compensation paid”.

1973—Subsec. (a). Pub. L. 93-69 substituted new tax rate provisions on income of employee representatives for services rendered after Sept. 30, 1973, for former provisions which prescribed 12½, 13, 14, 14½, and 15 percent on income for services rendered after Sept. 30, 1965, Dec. 31, 1965, Dec. 31, 1966, Dec. 31, 1967, and Dec. 31, 1968, respectively, as is not in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after September 30, 1965, by a number of percentage points (including fractional points) equal at any given time to twice the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section

3101(a) plus the rate imposed by section 3101(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956).

1970—Subsec. (b). Pub. L. 91-215 substituted the rate of excise tax imposed on every employer under section 3221(c) of this title for a flat 2-cents per man hour tax as the rate for additional taxes imposed on the income of employee representatives for each man hour of compensation paid.

1966—Pub. L. 89-700 substituted “rendered after September 30, 1965” for “rendered after December 31, 1964”, and “(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965” for “\$400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended”.

Pub. L. 89-699, §301(b), (d), designated existing provisions as subsec. (a), and substituted “14 percent” for “13½ percent” in subd. (3), “14½ percent” for “14 percent” in subd. (4), and “15 percent” for “14½ percent” in subd. (5).

Subsec. (b). Pub. L. 89-699, §301(d), added subsec. (b). 1965—Pub. L. 89-212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed a tax equal to 13½ percent of so much of the compensation paid to such employee representative for services rendered by him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 14½ percent of so much of the compensation paid to such employee representative for services rendered by him after Dec. 31, 1961, and inserted “and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended”.

Pub. L. 89-97 substituted “the rate of the tax imposed with respect to wages by section 3101(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3101 as amended by the Social Security Amendments of 1956)” for “the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956” and inserted “plus the rate imposed by section 3101(b)” after “section 3101(a)”, respectively.

1963—Pub. L. 88-133 limited the existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Pub. L. 86-28 increased the tax from 12½ percent of the compensation not in excess of \$350 for any calendar month to 13½ percent of the compensation not in excess of \$400 for any calendar month for services rendered before Jan. 1, 1962, and to 14½ percent for services rendered after Dec. 31, 1961, and required an increase in the rate of tax with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points equal at any given time to twice the number of percentage points by which the rate of tax imposed by section 3101 of this title at such time exceeds the rate provided by par. (2) of such section 3101 as amended by the Social Security Amendments of 1956.

1954—Act Aug. 31, 1954, substituted “\$350” for “\$300”.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-90, title II, §203(c), Dec. 21, 2001, 115 Stat. 891, provided that: “The amendments made by this sec-

tion [amending this section and section 3221 of this title] shall apply to calendar years beginning after December 31, 2001.”

Amendment by section 204(b) of Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(c) of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of this title.

Amendment by section 223 of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97-34, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94-93, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1972; and applicable to railway labor organization covered by private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93-69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 301(f) of Pub. L. 89-699, as amended by section 8 of Pub. L. 91-215, provided that: “The amendments made by subsections (d) and (e) of this section [amending this section and section 3221 of this title] shall be effective with respect to man-hours, beginning with the first month following enactment of this Act [Oct. 30, 1966], for which compensation is paid.”

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89-212 effective only with respect to calendar months after month in which Pub. L. 89-212 is enacted [September 1965], and amendment by section 5(b) of Pub. L. 89-212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(2) of Pub. L. 89-97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89-97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(2) of Pub. L. 89-97 applicable to calendar year 1966 or to any subsequent cal-

endar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 1395i-1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86-28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

SEPARABILITY

Section 9 of Pub. L. 91-215 provided that: "If any provision of this Act [amending this section, section 3221 of this title, and sections 228c and 228o of Title 45, Railroads, enacting provisions set out as notes under section 3221 of this title and sections 228c and 228o of Title 45, and amending provisions set out as notes under this section] or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby."

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97-123 or the amendments made by that section, see section 3(f) of Pub. L. 97-123, set out as a note under section 3101 of this title.

§ 3212. Determination of compensation

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 432.)

Subchapter C—Tax on Employers

Sec.

3221. Rate of tax.

§ 3221. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of compensation paid during any calendar year by such employer for services rendered to such employer. For purposes of the preceding sentence, the term "applicable percentage" means the percentage equal to the sum of the rates of tax in effect under

subsections (a) and (b) of section 3111 for the calendar year.

(b) Tier 2 tax

(1) In general

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the compensation paid during any calendar year by such employer for services rendered to such employer.

(2) Applicable percentage

For purposes of paragraph (1), the term "applicable percentage" means—

(A) 15.6 percent in the case of compensation paid during 2002,

(B) 14.2 percent in the case of compensation paid during 2003, and

(C) in the case of compensation paid during any calendar year after 2003, the percentage determined under section 3241 for such calendar year.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(Aug. 16, 1954, ch. 736, 68A Stat. 433; Aug. 31, 1954, ch. 1164, pt. II, §206(a), 68 Stat. 1040; Pub. L. 86-28, pt. II, §201(d), May 19, 1959, 73 Stat. 29; Pub. L. 88-133, title II, §202, Oct. 5, 1963, 77 Stat. 221; Pub. L. 89-97, title I, §§105(b)(3), 111(c)(3), July 30, 1965, 79 Stat. 335, 342; Pub. L. 89-212, §§4, 5(c), Sept. 29, 1965, 79 Stat. 861, 862; Pub. L. 89-699, title III, §301(c), (e), Oct. 30, 1966, 80 Stat. 1078; Pub. L. 89-700, title III, §§301(iii), (v), (vi), 302, Oct. 30, 1966, 80 Stat. 1088, 1089; Pub. L. 91-215, §5(a), (b)(1), Mar. 17, 1970, 84 Stat. 71; Pub. L. 93-69, title I, §102(d)-(f), July 10, 1973, 87 Stat. 162, 163; Pub. L. 93-445, title V, §501, Oct. 16, 1974, 88 Stat. 1359; Pub. L. 94-93, title II, §203, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94-455, title XIX, §§1903(a)(9), 1906(b)(13)(G), Oct. 4, 1976, 90 Stat. 1808, 1835; Pub. L. 97-34, title VII, §741(c), Aug. 13, 1981, 95 Stat. 347; Pub. L. 98-76, title II, §§211(b), 222, Aug. 12, 1983, 97 Stat. 419, 420; Pub. L. 100-203, title IX, §9032(a), Dec. 22, 1987, 101 Stat. 1330-296; Pub. L. 101-508, title V, §5125(c), Nov. 5, 1990, 104 Stat. 1388-286; Pub. L. 107-90, title II, §§203(b), 204(a), Dec. 21, 2001, 115 Stat. 891.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107-90, §204(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer."

Subsecs. (c) to (e). Pub. L. 107-90, §203(b), redesignated subsec. (e) as (c) and struck out former subsecs. (c) and (d) which provided, in subsec. (c), for imposition of excise tax on every employer, with respect to having individuals in his employ, for each man-hour for which compensation was paid by such employer for services rendered to him during any calendar quarter, and for credit against such tax of amount equivalent in each month to the aggregate amount of reductions in supplemental annuities accruing in such month to employ-

ees of such employer, and, in subsec. (d), that such tax would not apply to an employer with respect to employees covered by a supplemental pension plan which is established pursuant to an agreement reached through collective bargaining between the employer and employees.

1990—Subsec. (a). Pub. L. 101-508 substituted “applicable” for “following” before “percentage of” and provision defining “applicable percentage” for provision specifying the tax rate to be 7.05 percent, 7.15 percent, 7.51 percent, and 7.65 percent in the case of compensation paid during 1985, 1986 or 1987, 1988 or 1989, or 1990 or thereafter, respectively.

1987—Subsec. (b). Pub. L. 100-203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

“In the case of compensation

paid during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75.”

1983—Subsec. (a). Pub. L. 98-76, § 222(a), in amending subsec. (a) generally, substituted provisions imposing an excise tax on employers, with respect to having individuals in his employ, equal to a percentage of compensation paid as set out in an accompanying table, for provisions which imposed an excise tax on employers, with respect to having individuals in his employ, equal to 12.75 percent of so much of the compensation paid in any calendar month by such employer for services rendered to him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 for any month, with certain exceptions dealing with multiple employers.

Pub. L. 98-76, § 211(b), substituted “12.75 percent” for “11.75 percent”.

Subsec. (b). Pub. L. 98-76, § 222(a), in amending subsec. (b) generally, substituted provisions imposing a second tier excise tax on employers equal to a percentage of compensation paid as set out in an accompanying table, for provisions that the rate of tax imposed by former subsec. (a) would be increased by the rate of tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b).

Subsec. (e). Pub. L. 98-76, § 222(b), added subsec. (e).

1981—Subsec. (a). Pub. L. 97-34 substituted in first sentence “11.75” for “9.5”.

1976—Subsec. (a). Pub. L. 94-455, §§ 1903(a)(9)(A), 1906(b)(13)(G), struck out provisions relating to the September 30, 1973 qualification on the applicability of provisions of this subsection, “of the Internal Revenue Code of 1954” after “as defined in section 3121” wherever appearing, and “of the Treasury” after “to the Secretary”.

Subsec. (b). Pub. L. 94-455, § 1903(a)(9)(B), struck out “, with respect to compensation paid for services rendered after September 30, 1973,” after “shall be increased”, “of the Internal Revenue Code of 1954” after “by section 3111(a)” and “of such Code” after “by section 3111(b)”.

Subsec. (c). Pub. L. 94-455, §§ 1903(a)(9)(C), 1906(b)(13)(G), struck out “(1) at the rate of two cents for the period beginning November 1, 1966, and ending March 31, 1970, and (2) commencing April 1, 1970,” after “during any calendar quarter,”, “commencing with the quarter beginning April 1, 1970” after “required for each calendar quarter”, “of the Treasury” after “representatives, and the Secretary” and “of the Treasury” after “shall certify to the Secretary”.

1975—Subsec. (a). Pub. L. 94-93 substituted “compensation paid in any calendar month by such employer” for “compensation paid by such employer”.

1974—Subsec. (c). Pub. L. 93-445, § 501(a), struck out “for appropriation to the Railroad Retirement Supple-

mental Account provided for in section 15(b) of the Railroad Retirement Act of 1937” after “commencing April 1, 1970, at such rate as will make available”, substituted “at the level provided under section 3(j) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974” for “under section 3(j) of such Act”, and inserted “or section 2(h)(2) of the Railroad Retirement Act of 1974” after “section 3(j)(2) of the Railroad Retirement Act of 1937”.

Subsec. (d). Pub. L. 93-445, § 501(b), substituted “section 2(b) of the Railroad Retirement Act of 1974” for “section 3(j) of the Railroad Retirement Act of 1937” and “section 2(b) of such Act” for “section 3(j) of such Act”.

1973—Subsec. (a). Pub. L. 93-69, § 102(d), (e), substituted new tax rate provisions on employers for services rendered after Sept. 30, 1973, for former provisions which prescribed 6¼, 6½, 7, 7¼, and 7½ percent on income for services rendered after Sept. 30, 1965; Dec. 31, 1965; Dec. 31, 1966; Dec. 31, 1967; and Dec. 31, 1968, respectively, as is, with respect to any employee for any calendar month, not in excess of (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable “wages” as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after Sept. 30, 1965, and, in first sentence, substituted “1973” for “1965” wherever appearing, struck out “(i) \$450, or (ii)” before “an amount equal to” in two places, and struck out “, whichever is greater,” after “Internal Revenue Code of 1954” in two places, respectively.

Subsec. (b). Pub. L. 93-69, § 102(f), substituted “1973” for “1965” and “by the rate of tax imposed with respect to wages by section 3111(a) of the Internal Revenue Code of 1954 plus the rate imposed by section 3111(b) of such Code”, for “by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)”.

1970—Subsec. (c). Pub. L. 91-215, § 5(a), provided a variable standard of taxation on employers for services rendered them during any calendar quarter at the existing 2 cent rate for each man-hour of services for the period from Nov. 1, 1966 to Mar. 31, 1970, and thereafter at such rates as will permit supplemental annuity payments under section 228c(j) of this title, and authorized the Railroad Retirement Board to make the necessary determination of rates, and made it its duty to publish notice of such determinations in the Federal Register.

Subsec. (d). Pub. L. 91-215, § 5(b)(1), added subsec. (d). 1966—Subsec. (a). Pub. L. 89-700, §§ 301(iii), (v), 302, substituted “after September 30, 1965” for “after the month in which this provision was amended in 1959” in six places, and “(i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965” for “400 for any calendar month before the calendar month next following the month in which this provision was amended in 1963, or \$450 for any calendar month after the month in which this provision was so amended and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after the month in which this provision was so amended” in four places, and inserted sentence providing that where compensation for services rendered in a month is paid by two or more employers, one of the employers may, by notice to the Secretary, and by agreement with the other employer, elect for the tax imposed by section 3201 and this section to apply to all of the compensation paid by such employer for such month as does not exceed the maximum amount of compensation

in respect to which taxes are imposed by section 3201 and this section; and in such a case the liability of the other employer shall be limited to the difference, if any, between the compensation paid by the electing employer and the maximum amount of compensation to which section 3201 and this section apply.

Pub. L. 89-699, §301(c), substituted “7 percent” for “6¼ percent” in subd. (3), “7¼ percent” for “7 percent” in subd. (4), and “7½ percent” for “7¼ percent” in subd. (5).

Subsec. (b). Pub. L. 89-700, §301(vi), substituted “after September 30, 1965” for “after December 31, 1964”.

Subsec. (c). Pub. L. 89-699 added subsec. (c).

1965—Subsec. (a). Pub. L. 89-212 substituted pars. (1) to (5) for former pars. (1) and (2) which imposed an excise tax equal to 6¼ percent of so much of the compensation paid by such employer for services rendered to him after the month in which this provision was amended in 1959, and before Jan. 1, 1962, and 7¼ percent of so much of the compensation paid by such employer for services rendered to him after Dec. 31, 1961, and inserted “and before the calendar month next following the calendar month in which this provision was amended in 1965, or (i) \$450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable ‘wages’ as defined in section 3121, whichever is greater, for any month after the month in which this provision was so amended” wherever appearing.

Subsec. (b). Pub. L. 89-97 substituted “the rate of the tax imposed with respect to wages by section 3111(a) at such time exceeds 2¾ percent (the rate provided by paragraph (2) of section 3111 as amended by the Social Security Amendments of 1956)” for “the rate of the tax imposed with respect to wages by section 3111 at such time exceeds the rate provided by paragraph (2) of such section 3111 as amended by the Social Security Amendments of 1956” and inserted “plus the rate imposed by section 3111(b)” after “section 3111(a)”, respectively.

1963—Subsec. (a). Pub. L. 88-133 limited the existing taxable compensation base of \$400 to any calendar month before Nov. 1963 and increased such base to \$450 for any calendar month after Oct. 1963.

1959—Subsec. (a). Pub. L. 86-28, §201(d)(1), (2)(A), (B), designated former provisions of section as subsec. (a), increased the tax from 6¼ percent of the compensation not in excess of \$350 for any calendar month to 6¼ percent of the compensation not in excess of \$400 for any calendar month for services rendered before Jan. 1, 1962, and to 7¼ percent for services rendered after Dec. 31, 1961, and substituted “after the month in which this provision was amended in 1959” for “after 1954” and for “after December 31, 1954” in six places, “not more than \$400” for “not more than \$350”, and “less than \$400” for “less than \$350”.

Subsec. (b). Pub. L. 86-28, §201(d)(2)(C), added subsec. (b).

1954—Act Aug. 31, 1954, substituted “\$350” for “\$300” wherever appearing.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 203(b) of Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see section 203(c) of Pub. L. 107-90, set out as a note under section 3211 of this title.

Amendment by section 204(a) of Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9032(b) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section] shall apply with respect to compensation paid after December 31, 1987.”

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 211(b) of Pub. L. 98-76 applicable to compensation paid for services rendered after

Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of this title.

Amendment by section 222 of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97-34, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1903(a)(9) of Pub. L. 94-455 applicable with respect to compensation paid for services rendered after Dec. 31, 1976, see section 1903(d) of Pub. L. 94-455, set out as a note under section 3101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, see section 207 of Pub. L. 94-93, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 604 of Pub. L. 93-445 provided that: “The amendments made by the provisions of title V of this Act [amending this section and section 6413 of this title] shall become effective on January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date.”

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-69 effective Oct. 1, 1973, and applicable only with respect to compensation paid for services rendered on or after Oct. 1, 1973; and applicable to railway labor organization covered by a private supplemental pension plan as of Oct. 1, 1973, and subject to a moratorium, agreed to on or before Mar. 8, 1973, for changes in pay rates, on the earlier of (1) date of expiration of such moratorium, or (2) date as of which the railway labor organization through collective bargaining agreement makes amendment applicable, see section 109(b) of Pub. L. 93-69, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-699 effective with respect to man-hours, beginning with first month following Oct. 30, 1966, for which compensation is paid, see section 301(f) of Pub. L. 89-699, set out as a note under section 3211 of this title.

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by section 4 of Pub. L. 89-212 effective only with respect to calendar months after the month in which Pub. L. 89-212 is enacted [September 1965], and amendment by section 5(c) of Pub. L. 89-212 effective only with respect to compensation paid for services rendered after Sept. 30, 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

Amendment by section 105(b)(3) of Pub. L. 89-97 effective with respect to compensation paid for services rendered after Dec. 31, 1965, see section 105(b)(4) of Pub. L. 89-97, set out as a note under section 3201 of this title.

Amendment by section 111(c)(3) of Pub. L. 89-97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum

wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89-97, set out as an Effective Date note under section 13951-1 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-28 effective, except as otherwise provided, first day of calendar month next following May 1959, see section 202 of Pub. L. 86-28, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

PENALTIES AND INTEREST NOT ASSESSED FOR FAILURE TO MAKE TIMELY PAYMENT DURING PERIOD JANUARY 1, 1982, TO JUNE 30, 1982, OF TAXES ATTRIBUTABLE TO AMENDMENTS BY PUB. L. 97-123

For provision that no penalties or interest shall be assessed on account of any failure to make timely payment of taxes imposed by subsec. (b) of this section with respect to payments made for the period Jan. 1, 1982, and ending June 30, 1982, to the extent that such taxes are attributable to section 3 of Pub. L. 97-123 or the amendments made by that section, see section 3(f) of Pub. L. 97-123, set out as a note under section 3101 of this title.

EXCISE TAXES ON EMPLOYERS; EMPLOYEES COVERED BY CERTAIN SUPPLEMENTAL PENSION PLANS

Section 5(b)(2) of Pub. L. 91-215 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to (A) supplemental annuities paid on or after April 1, 1970, and (B) man-hours with respect to which compensation is paid for services rendered to such employer on or after such day."

Subchapter D—General Provisions

Sec.	
3231.	Definitions.
3232.	Court jurisdiction.
3233.	Short title.

§ 3231. Definitions

(a) Employer

For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other

motive power. The Surface Transportation Board is hereby authorized and directed upon request of the Secretary, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tippie, and the operation of equipment or facilities therefor, or in any of such activities.

(b) Employee

For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) if he was so called he was solely for such reason unable to render service in 6 cal-

endar months as provided in paragraph (2); or

(4) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) Employee representative

For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (45 U.S.C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) Service

For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a

railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1(c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation;

Provided however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) Compensation

For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf

of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee, (ii) tips (except as is provided under paragraph (3)), (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment, or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5). Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a non-immigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an “employer” in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his “years of service” for purposes of the Railroad Retirement Act. Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from “wages” as used in such chapter shall be construed to require a similar exclusion from “compensation” in regulations prescribed for purposes of this chapter.

(2) Application of contribution bases

(A) Compensation in excess of applicable base excluded

(i) In general

The term “compensation” does not include that part of remuneration paid during any calendar year to an individual by an employer after remuneration equal to

the applicable base has been paid during such calendar year to such individual by such employer for services rendered as an employee to such employer.

(ii) Remuneration not treated as compensation excluded

There shall not be taken into account under clause (i) remuneration which (without regard to clause (i)) is not treated as compensation under this subsection.

(iii) Hospital insurance taxes

Clause (i) shall not apply to—

(I) so much of the rate applicable under section 3201(a) or 3221(a) as does not exceed the rate of tax in effect under section 3101(b), and

(II) so much of the rate applicable under section 3211(a) as does not exceed the rate of tax in effect under section 1401(b).

(B) Applicable base

(i) Tier 1 taxes

Except as provided in clause (ii), the term “applicable base” means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

(ii) Tier 2 taxes, etc.

For purposes of—

(I) the taxes imposed by sections 3201(b), 3211(b), and 3221(b), and

(II) computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 (except with respect to annuity amounts determined under subsection (a) or (f)(3) of section 3 of such Act),

clause (2) of the first sentence, and the second sentence, of subsection (c) of section 230 of the Social Security Act shall be disregarded.

(C) Successor employers

For purposes of this paragraph, the second sentence of section 3121(a)(1) (relating to successor employers) shall apply, except that—

(i) the term “services” shall be substituted for “employment” each place it appears,

(ii) the term “compensation” shall be substituted for “remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection)” each place it appears, and

(iii) the terms “employer”, “services”, and “compensation” shall have the meanings given such terms by this section.

(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term “compensation” also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than \$20.

(4)(A) For purposes of applying sections 3201(a), 3211(a), and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term “compensation” only—

- (i) payments which are received under a workmen’s compensation law, and
- (ii) benefits received under the Railroad Retirement Act of 1974.

(B) Notwithstanding any other provision of law, for purposes of the sections specified in subparagraph (A), the term “compensation” shall include benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness, except to the extent that such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(C) Under regulations prescribed by the Secretary, subparagraphs (A) and (B) shall not apply to payments made after the expiration of a 6-month period comparable to the 6-month period described in section 3121(a)(4).

(D) Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in compensation solely by reason of subparagraph (A) or (B) shall be treated for purposes of this chapter as the employer with respect to such compensation.

(5) The term “compensation” shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132.

(6) The term “compensation” shall not include any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

(7) The term “compensation” shall not include any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans).

(8) Treatment of certain deferred compensation and salary reduction arrangements

(A) Certain employer contributions treated as compensation

Nothing in any paragraph of this subsection (other than paragraph (2)) shall exclude from the term “compensation” any amount described in subparagraph (A) or (B) of section 3121(v)(1).

(B) Treatment of certain nonqualified deferred compensation

The rules of section 3121(v)(2) which apply for purposes of chapter 21 shall also apply for purposes of this chapter.

(9) Meals and lodging

The term “compensation” shall not include the value of meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119.

(10) Archer MSA contributions

The term “compensation” shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b).

(11) Health savings account contributions

The term “compensation” shall not include any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d).

(12) Qualified stock options

The term “compensation” shall not include any remuneration on account of—

- (A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or
- (B) any disposition by the individual of such stock.

(f) Company

For purposes of this chapter, the term “company” includes corporations, associations, and joint-stock companies.

(g) Carrier

For purposes of this chapter, the term “carrier” means a rail carrier subject to part A of subtitle IV of title 49.

(h) Tips constituting compensation, time deemed paid

For purposes of this chapter, tips which constitute compensation for purposes of the taxes imposed by section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(i) Concurrent employment by 2 or more employers

For purposes of this chapter, if 2 or more related corporations which are employers concurrently employ the same individual and compensate such individual through a common paymaster which is 1 of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(Aug. 16, 1954, ch. 736, 68A Stat. 434; Aug. 31, 1954, ch. 1164, pt. II, §206(b), 68 Stat. 1040; Pub. L. 89-212, §2(b), Sept. 29, 1965, 79 Stat. 859; Pub. L. 90-624, §1, Oct. 22, 1968, 82 Stat. 1316; Pub. L.

94-92, title II, §203(b), Aug. 9, 1975, 89 Stat. 465; Pub. L. 94-93, title II, §§204-206, Aug. 9, 1975, 89 Stat. 466; Pub. L. 94-455, title XIX, §§1903(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1808, 1834; Pub. L. 94-547, §4(b), Oct. 18, 1976, 90 Stat. 2526; Pub. L. 95-473, §2(a)(2)(G), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 97-34, title VII, §§741(d)(2), 743(a)-(c), Aug. 13, 1981, 95 Stat. 347, 348; Pub. L. 97-123, §3(c), Dec. 29, 1981, 95 Stat. 1662; Pub. L. 98-76, title II, §225(a)(1), (3), (b), (c)(1)(C), (6)-(8), Aug. 12, 1983, 97 Stat. 424, 425; Pub. L. 98-369, div. A, title V, §531(d)(2), July 18, 1984, 98 Stat. 884; Pub. L. 98-611, §1(f), Oct. 31, 1984, 98 Stat. 3178; Pub. L. 98-612, §1(c), Oct. 31, 1984, 98 Stat. 3181; Pub. L. 99-514, title I, §122(e)(2), title XVIII, §1899A(41), Oct. 22, 1986, 100 Stat. 2112, 2960; Pub. L. 100-647, title I, §§1001(d)(2)(C)(ii), 1011B(a)(22)(B), Nov. 10, 1988, 102 Stat. 3351, 3486; Pub. L. 101-140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title X, §§10205(a), 10206(a), (b), 10207(a), (b), Dec. 19, 1989, 103 Stat. 2474-2476; Pub. L. 101-508, title XI, §§11331(c), 11704(a)(19), Nov. 5, 1990, 104 Stat. 1388-468, 1388-519; Pub. L. 103-66, title XIII, §13207(c), Aug. 10, 1993, 107 Stat. 468; Pub. L. 103-296, title III, §320(a)(1)(D), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 104-88, title III, §304(d), Dec. 29, 1995, 109 Stat. 944; Pub. L. 104-191, title III, §301(c)(2)(A), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 106-554, §1(a)(7) [title II, §202(b)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-629; Pub. L. 107-90, title II, §204(e)(3), (4), Dec. 21, 2001, 115 Stat. 893; Pub. L. 108-173, title XII, §1201(d)(2)(A), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108-357, title II, §251(a)(2), title III, §320(b)(2), Oct. 22, 2004, 118 Stat. 1458, 1473.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsecs. (a) and (c), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

Sections 1 and 6 of the Railroad Retirement Act of 1937, referred to in subsecs. (b) and (d)(7), were classified to sections 228a and 228f of Title 45. The subject matter of sections 228a and 228f is covered by sections 231 and 231o of Title 45.

Section 230 of the Social Security Act, referred to in subsec. (e)(2)(B), is classified to section 430 of Title 42, The Public Health and Welfare.

Section 3(a), (f)(3), (j) of the Railroad Retirement Act of 1974, referred to in subsec. (e)(2)(B)(ii)(II), is classified to section 231b(a), (f)(3), (j) of Title 45, Railroads.

The Railroad Retirement Act of 1974, referred to in subsec. (e)(4)(A)(ii), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 101(a)(15) of the Immigration and Nationality Act, referred to in subsec. (e)(1), is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (e)(4)(B), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

2004—Subsec. (e)(5). Pub. L. 108-357, §320(b)(2), inserted “108(f)(4),” after “74(c),”.

Subsec. (e)(12). Pub. L. 108-357, §251(a)(2), added par. (12).

2003—Subsec. (e)(11). Pub. L. 108-173 added par. (11).

2001—Subsec. (e)(2)(A)(iii)(II). Pub. L. 107-90, §204(e)(3), substituted “3211(a)” for “3211(a)(1)”.

Subsec. (e)(2)(B)(ii)(I). Pub. L. 107-90, §204(e)(4), substituted “3211(b)” for “3211(a)(2)”.

Subsec. (e)(4)(A). Pub. L. 107-90, §204(e)(3), substituted “3211(a)” for “3211(a)(1)”.

2000—Subsec. (e)(10). Pub. L. 106-554 substituted “Archer MSA” for “Medical savings account” in heading. 1996—Subsec. (e)(10). Pub. L. 104-191 added par. (10).

1995—Subsec. (a). Pub. L. 104-88, §304(d)(1), substituted “Surface Transportation Board” for “Interstate Commerce Commission”.

Subsec. (g). Pub. L. 104-88, §304(d)(2), substituted “a rail carrier subject to part A of subtitle IV” for “an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105”.

1994—Subsec. (e)(1). Pub. L. 103-296 substituted “(J), (M), or (Q)” for “(J), or (M)” in two places.

1993—Subsec. (e)(2)(A)(iii). Pub. L. 103-66, §13207(c)(1), added cl. (iii).

Subsec. (e)(2)(B)(i). Pub. L. 103-66, §13207(c)(2), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows:

“(I) IN GENERAL.—Except as provided in subclause (II) of this clause and in clause (ii), the term ‘applicable base’ means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.”

“(II) HOSPITAL INSURANCE TAXES.—For purposes of applying so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and for purposes of applying so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b), the term ‘applicable base’ means for any calendar year the applicable contribution base determined under section 3121(x)(2) for such calendar year.”

1990—Subsec. (e)(2)(B)(i). Pub. L. 101-508, §11331(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “Except as provided in clause (ii), the term ‘applicable base’ means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.”

Subsec. (e)(8) to (10). Pub. L. 101-508, §11704(a)(19), redesignated pars. (9) and (10) as (8) and (9), respectively.

1989—Subsec. (e)(1). Pub. L. 101-239, §10207(b), inserted at end “Nothing in the regulations prescribed for purposes of chapter 24 (relating to wage withholding) which provides an exclusion from ‘wages’ as used in such chapter shall be construed to require a similar exclusion from ‘compensation’ in regulations prescribed for purposes of this chapter.”

Pub. L. 101-239, §10206(a), substituted “(iii)” for “or (iii)” and inserted “, or (iv) any remuneration which would not (if chapter 21 applied to such remuneration) be treated as wages (as defined in section 3121(a)) by reason of section 3121(a)(5)”.

Pub. L. 101-239, §10205(a), inserted “or death, except that this clause does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee” before “, (ii) tips”.

Subsec. (e)(8). Pub. L. 101-140 amended subsec. (e) to read as if amendments by Pub. L. 100-647, §1011B(a)(22)(B), had not been enacted, see 1988 Amendment note below.

Subsec. (e)(9). Pub. L. 101-239, §10206(b), added par. (9).

Subsec. (e)(10). Pub. L. 101-239, §10207(a), added par. (10).

1988—Subsec. (e)(1). Pub. L. 100-647, §1001(d)(2)(C)(ii), substituted “(F), (J), or (M)” for “(F) or (J)” in two places.

Subsec. (e)(8). Pub. L. 100-647, §1011B(a)(22)(B), added par. (8).

1986—Subsec. (e)(5). Pub. L. 99-514, §122(e)(2), inserted reference to section 74(c).

Subsec. (e)(6), (7). Pub. L. 99-514, §1899A(41), redesignated par. (6), relating to amounts excludable under section 120, as (7).

1984—Subsec. (e)(5). Pub. L. 98-369, §531(d)(2), added par. (5).

Subsec. (e)(6). Pub. L. 98-611 added par. (6) relating to amounts excludable under section 127.

Pub. L. 98-612 added par. (6) relating to amounts excludable under section 120.

1983—Subsec. (e)(1). Pub. L. 98-76, §225(a)(3), struck out provisions that compensation which was paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact prescribed date of payment would fall on a Saturday, Sunday or legal holiday would be deemed to have been paid in such prior or subsequent taxable month and that compensation which was earned during the period for which the Secretary would require a return of taxes under this chapter to be made and which was payable during the calendar month following such period would be deemed to have been paid during such period only.

Subsec. (e)(2). Pub. L. 98-76, §225(a)(1), amended par. (2) generally, substituting provisions which exclude compensation in excess of applicable base, which define “applicable base”, and which provide for the applicability of successor employer provisions to this paragraph, for provisions that a payment made by an employer to an individual through the employer’s payroll would be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment was made, that an employee receiving retroactive wage payments would be deemed to be paid compensation in the period during which such compensation was earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid, that an employee would be deemed to be paid “for time lost” the amount he was paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he was paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation, and that if a payment was made by an employer with respect to a personal injury and included pay for time lost, the total payment would be deemed to be paid for time lost unless, at the time of payment, a part of such payment was specifically apportioned to factors other than time lost, in which event only such part of the payment as was not so apportioned would be deemed to be paid for time lost.

Subsec. (e)(3). Pub. L. 98-76, §225(c)(1)(C), (6), substituted “taxes imposed by section 3201” for “tax imposed by section 3201”, and “such taxes” for “such tax”.

Subsec. (e)(4)(A). Pub. L. 98-76, §225(c)(7), substituted “3201(a), 321(a)(1), and 3221(a)” for “3201(b) and 3221(b) (and so much of section 3211(a) as relates to the rates of the taxes imposed by sections 3101 and 3111)”.

Subsec. (h). Pub. L. 98-76, §225(c)(8), substituted “taxes imposed by section 3201” for “tax imposed under section 3201”, and struck out “; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month” after “time received”.

Subsec. (i). Pub. L. 98-76, §225(b), added subsec. (i).

1981—Subsec. (e)(1). Pub. L. 97-34, §743(a), inserted after third sentence provision that “Compensation which is paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact that prescribed date of payment would fall on a Saturday, Sunday or legal holiday shall be deemed to have been paid in such prior or subsequent taxable month.”

Pub. L. 97-34, §741(d)(2), struck out cl. (iii) exclusion from term “compensation” the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201, redesignated as cl. (iii) provisions formerly designated (iv).

Subsec. (e)(2). Pub. L. 97-34, §743(b), (c), inserted first sentence respecting presumption of a payment through

the employer’s payroll as being compensation for services rendered as an employee in the period with respect to which payment is made, and in second sentence following “an employee” inserted “receiving retroactive wage payments”.

Subsec. (e)(4). Pub. L. 97-123 added par. (4).

1978—Subsec. (g). Pub. L. 95-473 substituted “express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49” for “express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1)”.

1976—Subsec. (a). Pub. L. 94-455, §§1903(a)(10)(A), 1906(b)(13)(A), struck out “44 Stat. 577;” before “45 U.S.C., chapter 8” and “or his delegate” after “Secretary”, respectively.

Subsec. (b). Pub. L. 94-455, §1903(a)(10)(B), struck out in provisions following par. (4) “50 Stat. 312;” before “45 U.S.C. 228f”.

Subsec. (c). Pub. L. 94-455, §1903(a)(10)(C), struck out “44 Stat. 577;” before “45 U.S.C. chapter 8”.

Subsec. (d)(7). Pub. L. 94-455, §1903(a)(10)(D), struck out “50 Stat. 308;” before “45 U.S.C. 228a”.

Subsec. (e)(1). Pub. L. 94-547 provided that “compensation” not include amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, or an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (e)(1). Pub. L. 94-93, §204, substituted “paid to an individual for services rendered as an employee to one or more employers” for “earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost”.

Pub. L. 94-92 increased from \$3 to \$25 amount of compensation earned in the service of a local lodge or division of a railway-labor-organization employer to be disregarded with respect to any calendar month in the determination of amount of taxes under sections 3201 and 3221.

Subsec. (e)(2). Pub. L. 94-93, §§205, 206, substituted provision that an employee shall be deemed to be paid compensation in the period during which such compensation is earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid for provision that a payment made by an employer to an individual through the employer’s payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which payment is made.

1968—Subsec. (e)(1). Pub. L. 90-624 inserted provision excluding remuneration for service performed by non-resident alien individuals temporarily in the United States as participants in a cultural exchange or training program.

1965—Subsec. (e)(1). Pub. L. 89-212, §2(b)(1), inserted “(except as is provided under paragraph (3))”.

Subsec. (e)(3). Pub. L. 89-212, §2(b)(2), added par. (3).

Subsec. (h). Pub. L. 89-212, §2(b)(3), added subsec. (h).
1954—Subsec. (e)(1). Act Aug. 31, 1954, excluded from taxation compensation, for service as a delegate to a national or international convention of a railway labor organization, of any person who has no other previous creditable service.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 251(a)(2) of Pub. L. 108-357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108-357, set out as a note under section 421 of this title.

Amendment by section 320(b)(2) of Pub. L. 108-357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108-357, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-90 applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103-296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to 1994 and later calendar years, see section 13207(e) of Pub. L. 103-66, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11331(c) of Pub. L. 101-508 applicable to 1991 and later calendar years, see section 11331(e) of Pub. L. 101-508, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 10205(b) of Pub. L. 101-239 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to—

“(A) group-term life insurance coverage in effect after December 31, 1989, and

“(B) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

“(2) EXCEPTION.—The amendment made by subsection (a) shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer's former employees who separated from employment with the employer on or before December 31, 1989, to the extent that such

payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.

“(3) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term ‘compensation’ as defined in section 1(h) of the Railroad Retirement Act of 1974 [45 U.S.C. 231(h)] includes any remuneration which is included in the term ‘compensation’ as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (a).”

Section 10206(c) of Pub. L. 101-239 provided that:

“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to remuneration paid after December 31, 1989.

“(2) SUBSECTION (b).—Except as otherwise provided in this subsection—

“(A) IN GENERAL.—The amendment made by subsection (b) [amending this section] shall apply to—

“(i) remuneration paid after December 31, 1989,

and

“(ii) remuneration paid before January 1, 1990, which the employer treated as compensation when paid.

“(B) BENEFIT DETERMINATIONS TO TAKE INTO ACCOUNT REMUNERATION ON WHICH TAX PAID.—The term ‘compensation’ as defined in section 1(h) of the Railroad Retirement Act of 1974 [45 U.S.C. 231(h)] includes any remuneration which is included in the term ‘compensation’ as defined in section 3231(e)(1) of the Internal Revenue Code of 1986 by reason of the amendment made by subsection (b).

“(3) SPECIAL RULE FOR CERTAIN PAYMENTS.—For purposes of applying the amendment made by subsection (b) to remuneration paid after December 31, 1989, which would have been taken into account before January 1, 1990, if such amendments had applied to periods before January 1, 1990, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

“(4) EXCEPTION FOR CERTAIN 401(k) CONTRIBUTIONS.—The amendment made by subsection (b) shall not apply to employer contributions made during 1990 and attributable to services performed during 1989 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of the arrangement as in effect on June 15, 1989—

“(A) the employee makes an election with respect to such contributions before January 1, 1990, and

“(B) the employer identifies the amount of such contribution before January 1, 1990.

“(5) SPECIAL RULE WITH RESPECT TO NONQUALIFIED DEFERRED COMPENSATION PLANS.—In the case of an agreement in existence on June 15, 1989, between a non-qualified deferred compensation plan (as defined in section 3121(v)(2)(C) of such Code) and an individual, the amendment made by subsection (b) shall apply with respect to services performed by the individual after December 31, 1989. The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies.”

Section 10207(c) of Pub. L. 101-239 provided that: “The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989.”

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(C)(ii) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 1011B(a)(22)(B) of Pub. L. 100-647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100-647, set out as a note under section 3121 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(2) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(d)(3) of Pub. L. 98-612 provided that: “The amendment made by subsection (c) [amending this section] shall apply to remuneration paid after December 31, 1984.”

Amendment by Pub. L. 98-611 applicable to remuneration paid after Dec. 31, 1984, see section 1(g)(3) of Pub. L. 98-611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97-123 applicable to remuneration paid after Dec. 31, 1981, except as otherwise provided, see section 3(g) of Pub. L. 97-123, set out as a note under section 3121 of this title.

Amendment by section 741(d)(2) of Pub. L. 97-34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97-34, set out as a note under section 3201 of this title.

Section 743(d) of Pub. L. 97-34 provided that: “The amendments made by this section [amending this section] shall apply for taxable years beginning after December 31, 1981.”

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4(c)(2) of Pub. L. 94-547 provided that: “The amendments made by subsection (b) of this section [amending this section] shall apply with respect to taxable years ending after December 31, 1953: *Provided, however,* That any taxes paid under the Railroad Retirement Tax Act [this chapter] prior to the date on which this Act is enacted [Oct. 18, 1976] shall not be affected or adjusted by reason of the amendments made by such subsection (b) except to the extent that the applicable period of limitation for the assessment of tax and the filing of a claim for credit or refund has not expired prior to the date on which this Act is enacted. If the applicable period of limitation for the filing of a claim for credit or refund would expire within the six-month period following the date on which this Act is enacted, the applicable period for the filing of such a claim for credit or refund shall be extended to include such six-month period.”

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by sections 204 and 205 of Pub. L. 94-93 applicable for taxable years ending on or after Aug. 9, 1975, and for taxable years ending before Aug. 9, 1975, as to which the period for assessment and collection of tax or the filing of a claim for credit or refund has not expired on Aug. 9, 1975, and amendment by section 206 of Pub. L. 94-93 applicable for taxable years beginning on or after Aug. 9, 1975: *Provided, however,* That with respect to payment made prior to Aug. 9, 1975, the employee may file a written request under section 206 of Pub. L. 94-93 within six months after Aug. 9, 1975, see section 207 of Pub. L. 94-93, set out as a note under section 3201 of this title.

Amendment by Pub. L. 94-92 effective Jan. 1, 1975, and applicable only with respect to compensation paid for services rendered on or after Jan. 1, 1975, see section 203(c) of Pub. L. 94-92, set out as a note under section 1402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4(a) of Pub. L. 90-624, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendments made by the first two sections of this Act [amending this section and section 228a of Title 45, Railroads] shall apply with respect to service performed after December 31, 1961.

“(2) Notwithstanding the expiration before the date of the enactment of this Act [Oct. 22, 1968] or within 6 months after such date of the period for filing claim for credit or refund, claim for credit or refund of any overpayment of any tax imposed by chapter 22 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, 26 U.S.C. 3201 et seq.] attributable to the amendment made by the first section of this Act [amending this section] may be filed at any time within one year after such date of enactment.

“(3) Any credit or refund of an overpayment of the tax imposed by section 3201 or 3211 of the Internal Revenue Code of 1986 which is attributable to the amendment made by the first section of this Act shall be appropriately adjusted for any lump-sum payment which has been made under section 5(f)(2) of the Railroad Retirement Act of 1937 [section 228e(f)(2) of Title 45] before the date of the allowance of such credit or the making of such refund.”

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 31, 1954, effective as if enacted as a part of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], see section 407 of act Aug. 31, 1954, as amended, set out as a note under section 3201 of this title.

REGULATIONS

For provisions requiring that the regulations prescribed under subsec. (e)(4) of this section prescribe procedures under which, if (with respect to any employee) the third party promptly (A) withholds the employee portion of the taxes involved, (B) deposits such portion under section 6302 of such Code, and (C) notifies the employer of the amount of the wages or compensation involved, the employer (and not the third party) shall be liable for the employer portion of the taxes involved and for meeting the requirements of section 6051 of this title (relating to receipts for employees) with respect to the wages or compensation involved, see section 3(d) of Pub. L. 97-123, set out as a note under section 3121 of this title.

EXCLUSION FROM WAGES AND COMPENSATION OF RE-FUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this chapter, the term “compensation” shall not include the amount of any refund required under section 421 of Pub. L. 100-360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101-239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

For purposes of applying subsec. (e) of this section with respect to subsec. (e)(4) of this section, payments under a State temporary disability law to be treated as remuneration for service, see section 3(e) of Pub. L. 97-123, set out as a note under section 3121 of this title.

§ 3232. Court jurisdiction

The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 437; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 3233. Short title

This chapter may be cited as the “Railroad Retirement Tax Act.”

(Aug. 16, 1954, ch. 736, 68A Stat. 438.)

Subchapter E—Tier 2 Tax Rate Determination

Sec.

3241. Determination of tier 2 tax rate based on average account benefits ratio.

§ 3241. Determination of tier 2 tax rate based on average account benefits ratio**(a) In general**

For purposes of sections 3201(b), 3211(b), and 3221(b), the applicable percentage for any calendar year is the percentage determined in accordance with the table in subsection (b).

(b) Tax rate schedule

Average account benefits ratio		Applicable percentage for sections 3211(b) and 3221(b)	Applicable percentage for section 3201(b)
At least	But less than		
	2.5	22.1	4.9
2.5	3.0	18.1	4.9
3.0	3.5	15.1	4.9
3.5	4.0	14.1	4.9
4.0	6.1	13.1	4.9
6.1	6.5	12.6	4.4
6.5	7.0	12.1	3.9
7.0	7.5	11.6	3.4
7.5	8.0	11.1	2.9
8.0	8.5	10.1	1.9
8.5	9.0	9.1	0.9
9.0		8.2	0

(c) Definitions related to determination of rates of tax**(1) Average account benefits ratio**

For purposes of this section, the term “average account benefits ratio” means, with respect to any calendar year, the average determined by the Secretary of the account benefits ratios for the 10 most recent fiscal years

ending before such calendar year. If the amount determined under the preceding sentence is not a multiple of 0.1, such amount shall be increased to the next highest multiple of 0.1.

(2) Account benefits ratio

For purposes of this section, the term “account benefits ratio” means, with respect to any fiscal year, the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and of the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefits Account) as of the close of such fiscal year by the total benefits and administrative expenses paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust during such fiscal year.

(d) Notice

No later than December 1 of each calendar year, the Secretary shall publish a notice in the Federal Register of the rates of tax determined under this section which are applicable for the following calendar year.

(Added Pub. L. 107-90, title II, §204(d), Dec. 21, 2001, 115 Stat. 892.)

EFFECTIVE DATE

Subchapter applicable to calendar years beginning after Dec. 31, 2001, see section 204(f) of Pub. L. 107-90, set out as an Effective and Termination Dates of 2001 Amendments note under section 24 of this title.

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

Sec.

3301. Rate of tax.
 3302. Credits against tax.
 3303. Conditions of additional credit allowance.
 3304. Approval of State laws.
 3305. Applicability of State law.
 3306. Definitions.
 3307. Deductions as constructive payments.
 3308. Instrumentalities of the United States.
 3309. State law coverage of services performed for nonprofit organizations or governmental entities.
 3310. Judicial review.
 3311. Short title.

AMENDMENTS

1976—Pub. L. 94-566, title I, §115(c)(4), Oct. 20, 1976, 90 Stat. 2671, substituted “services performed for nonprofit organizations or governmental entities” for “certain services performed for nonprofit organizations and for State hospitals and institutions of higher education” in item 3309.

1970—Pub. L. 91-373, title I, §§104(b)(2), 131(b)(3), Aug. 10, 1970, 84 Stat. 699, 705, added items 3309 and 3310 and redesignated former item 3309 as 3311.

1960—Pub. L. 86-778, title V, §531(d)(2), Sept. 13, 1960, 74 Stat. 984, added item 3308 and redesignated former item 3308 as 3309.

§ 3301. Rate of tax

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2 percent in the case of calendar years 1988 through 2007; or